



On behalf of the U.S. Chamber of Commerce’s Global Intellectual Property Center (GIPC), the Institute for 21st Century Energy, and their member businesses that are developing and deploying cutting-edge technologies to reduce greenhouse gas emissions and meet other pressing global needs, we are pleased to offer the following comments in response to Conference of the Parties Decision -/CP.14, which invites organizations to make submissions for the review and assessment of the effectiveness of the implementation of Article 4, paragraphs 1(c) and 5, of the Convention. These comments specifically address Article 4, paragraph 1(c) of the Convention and the areas of focus at subparagraphs 7(a) and (b) of the terms of reference for the review, which consider “institutional systems and regulatory and legislative frameworks needed to scale up development and transfer of technologies” and “steps governments ... can take to facilitate effective participation by the private sector.”

The U.S. Chamber of Commerce strongly supports the development, deployment, and worldwide distribution of new environmental goods and technologies. Private sector firms play an essential role in accomplishing those objectives by commercializing the results of research performed internally and by others. Foreign direct investment, joint ventures, contract manufacturing, and licensing are all proven and effective methods for transferring technology, efficiently sharing innovations, and distributing new ideas and techniques to those businesses or locations that can best employ them to create new and useful products and services. To enable the private sector to bring the fruits of research to market and to ensure ideas and innovations result in new products, governments must establish sound enabling environments through their national laws, policies, regulations, procedures, and help strengthen existing international frameworks. As explained below, such sound environments require strong and effective intellectual property (IP) rights and systems, well functioning judiciaries, and appropriate tax and tariff policies, and adequate infrastructure.

A prerequisite for any policy to scale up the development and commercial use of technologies is the existence of effective national intellectual property rights and systems. Such systems include: modern legislation and regulations consistent with international

agreements in the field of patents, trademarks, copyrights, industrial designs, and trade secrets; a well-functioning intellectual property office in charge of examining, registering, and granting IP rights; and qualified IP professionals who are in a position to assist rights holders and licensees throughout the patent life-cycle, particularly in the application process, the negotiation of licenses over patented technology and the enforcement and settlement of disputes. Institutional systems and regulatory and legislative frameworks that deliver strong protection and enforcement of intellectual property can limit the cost of doing business in a country and encourage foreign firms to invest, license, and make their most current technologies available in a way that benefits the country that needs the technology while also addressing the problem.

Where countries have taken clear steps to strengthen legal protections for intellectual property, and followed those steps with credible enforcement programs, they have seen significant increases in inward investment and research and development expenditures in innovative sectors. Economic growth, job creation, and sustained development soon followed. After India took steps to implement its obligations under the World Trade Organization (WTO) Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), for example, foreign direct investment in the pharmaceuticals sector increased by nearly 60 percent, and public sector research spending and the value of the domestic pharmaceutical industry also went up significantly. Since reforming its patent legislation in 2000, Jordan's pharmaceuticals sector has grown dramatically, employing many more people and shifting from generic manufacturing to biomedical innovation. Half the country's pharmaceutical companies now own their own patents.

Transparent ownership rules that give clear title to new ideas and innovations through exclusive licensing are an essential part of an effective national intellectual property rights system that facilitates technology transfer. Such rules not only provide predictability and legal certainty for all stakeholders, they also facilitate joint research among different institutions in a way that spurs growth and development. Before 1980, for example, universities in the United States were not permitted to patent technologies developed through government funding. As a result, their discoveries generally languished in the public domain because no one had the necessary economic incentive to undertake the risks of commercialization. Once clear title was granted, there was a dramatic increase in technology transfer activity and commercialization. In 2005 alone, more than 3,000 U.S. patents based on university research were issued, nearly 5,000 licenses were signed, 527 new products were introduced into the marketplace and 627 spin-off companies were launched.

Strong intellectual property protection and enforcement must go hand in hand with other policies that contribute to a successful enabling environment for technology diffusion. In a survey of corporate views conducted for the World Intellectual Property Organization (WIPO), businesses cited inadequate court systems as the top national-level limitation restricting the transfer of sensitive and valuable technologies. High taxes and import duties can also impede the transfer of technology, especially where the technology takes the form of physical goods. A June 2007 World Bank study found that average applied tariffs on environmental goods in low and middle-income WTO member countries are nearly four times greater than high-income countries. Eliminating tariff and non-tariff barriers to environmental goods and services should be vigorously pursued. Although WTO is the appropriate forum for these discussions, it is an example of an area where the UNFCCC discussions can play a catalyzing role. Inadequate infrastructure can also produce a unique set of challenges and impediments to technology deployment. The review and assessment of the effectiveness of the implementation of Article 4, paragraphs 1c) and 5, of the Convention must consider actions in all these areas.

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In short technology commerce is technology transfer, and stronger institutional systems and regulatory and legislative frameworks by all countries will be essential to scale up the development and commercial use of environmental technologies and facilitate effective participation by the private sector in those activities. Specifically, the Parties must avoid weakening IP protection and should instead prioritize actions to strengthen intellectual property protection and enforcement, lower or eliminate tariffs on environmental goods and services, improve infrastructure relative to the technologies needed, and consider appropriate judicial and tax reforms.